

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2301**

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**Introduced by Assembly Member Logue**

February 18, 2010

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An act to amend Section 51182 of the Government Code and to amend Section 4291 of the Public Resources Code, relating to fire protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 2301, as amended, Logue. Fire protection: defensible space.

**Existing**

(1) *Existing* law requires that a person who owns, leases, controls, operates, or maintains an occupied dwelling or occupied structure in, upon, or adjoining a mountainous area, forest-covered land, brush-covered land, grass-covered land, or land that is covered with flammable material that is within a very high fire hazard severity zone, as designated by a local agency, to maintain a defensible space of 100 feet from each side and from the front and rear of the structure. Existing law requires that a person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area, forest-covered land, brush-covered land, grass-covered land, or land that is covered with flammable material, within a state responsibility area, to maintain a defensible space of 100 feet from each side and from the front and rear of the structure. *An insurance company that insures an occupied dwelling or occupied structure is authorized to require a greater distance, but this greater distance is prohibited from extending beyond the property line unless allowed by state law or a local ordinance, rule, or regulation.*

~~This bill would make technical, nonsubstantive changes to those provisions provide that if the property is adjacent to state public lands, a state public lands management agency would be required to grant a right of entry boundary permit to a person subject to the greater distance requirement of the insurance company to enter land controlled by the state public lands management agency for purposes of undertaking defensible space work, as defined. The bill would impose conditions for purposes of this work and would exempt the defensible space work and the permit from the California Environmental Quality Act (CEQA) and the Z'berg-Nejedly Forest Practice Act of 1973. Because a lead agency would be required to determine the applicability of, and to give notice of, that exemption, this bill would create a state-mandated local program.~~

*(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 51182 of the Government Code is  
2 amended to read:  
3 51182. (a) A person who owns, leases, controls, operates, or  
4 maintains an occupied dwelling or occupied structure in, upon, or  
5 adjoining a mountainous area, forest-covered land, brush-covered  
6 land, grass-covered land, or land that is covered with flammable  
7 material, which area or land is within a very high fire hazard  
8 severity zone designated by the local agency pursuant to Section  
9 51179, shall at all times do all of the following:  
10 (1) Maintain defensible space of 100 feet from each side and  
11 from the front and rear of the structure, but not beyond the property  
12 line except as provided in paragraph (2). The amount of fuel  
13 modification necessary shall take into account the flammability  
14 of the structure as affected by building material, building standards,  
15 location, and type of vegetation. Fuels shall be maintained in a  
16 condition so that a wildfire burning under average weather

conditions would be unlikely to ignite the structure. This paragraph does not apply to single specimens of trees or other vegetation that are well-pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to a structure or from a structure to other nearby vegetation. The intensity of fuels management may vary within the 100-foot perimeter of the structure, the most intense being within the first 30 feet around the structure. Consistent with fuels management objectives, steps should be taken to minimize erosion.

(2) A greater distance than that required under paragraph (1) may be required by state law, local ordinance, rule, or regulation. Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. Clearance on adjacent property shall only be conducted following written consent by the adjacent landowner.

(3) An insurance company that insures an occupied dwelling or occupied structure may require a greater distance than that required under paragraph (1) if a fire expert, designated by the fire chief or fire official from the authority having jurisdiction, provides findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. The greater distance may not be beyond the property line unless ~~allowed by state law, local ordinance, rule, or regulation.~~ *either of the following apply:*

(A) *The greater distance is allowed by state law, local ordinance, rule, or regulation.*

(B) *The property is adjacent to state public lands, in which case all of the following shall apply:*

(i) *The state public lands management agency shall grant a right of entry boundary permit to a person subject to this subparagraph to enter land controlled by the state public lands management agency for purposes of undertaking defensible space work. The state public lands management agency shall also grant this right of entry boundary permit to a homeowners' association,*

1 *other type of multidwelling agency, local regional fire safe council,*  
2 *or other organized fire protection and prevention entity to*  
3 *undertake defensible space work for all residents who are subject*  
4 *to this subparagraph and who are represented by that entity or*  
5 *organization. For purposes of this subparagraph, “defensible*  
6 *space work” means the clearing that is necessary to significantly*  
7 *reduce the risk of transmission of flame or heat sufficient to ignite*  
8 *the structure.*

9 *(ii) The state shall require a person passing onto and conducting*  
10 *defensible space work on state public lands to provide a liability*  
11 *waiver, to ensure that the state is not liable for any injury incurred*  
12 *during the work.*

13 *(iii) If the person subject to this section enters into a contract*  
14 *with a third party to conduct the defensible space work, the*  
15 *contractor shall maintain insurance, and if the resident is*  
16 *undertaking that work himself or herself, the resident shall*  
17 *maintain homeowners’ or other appropriate insurance.*

18 *(iv) The person undertaking the defensible work on the public*  
19 *lands shall be over 18 years of age.*

20 *(v) The defensible space work conducted pursuant to this*  
21 *subparagraph, including the granting of a permit pursuant to this*  
22 *subparagraph, is exempt from Division 21 (commencing with*  
23 *Section 21000) of the Public Resources Code and Chapter 8*  
24 *(commencing with Section 4511) of Division 4 of the Public*  
25 *Resources Code.*

26 *(4) Remove that portion of a tree that extends within 10 feet of*  
27 *the outlet of a chimney or stovepipe.*

28 *(5) Maintain a tree, shrub, or other plant adjacent to or*  
29 *overhanging a building free of dead or dying wood.*

30 *(6) Maintain the roof of a structure free of leaves, needles, or*  
31 *other vegetative materials.*

32 *(7) Prior to constructing a new dwelling or structure that will*  
33 *be occupied or rebuilding an occupied dwelling or occupied*  
34 *structure damaged by a fire in that zone, the construction or*  
35 *rebuilding of which requires a building permit, the owner shall*  
36 *obtain a certification from the local building official that the*  
37 *dwelling or structure, as proposed to be built, complies with all*  
38 *applicable state and local building standards, including those*  
39 *described in subdivision (b) of Section 51189, and shall provide*  
40 *a copy of the certification, upon request, to the insurer providing*

1 course of construction insurance coverage for the building or  
2 structure. Upon completion of the construction or rebuilding, the  
3 owner shall obtain from the local building official, a copy of the  
4 final inspection report that demonstrates that the dwelling or  
5 structure was constructed in compliance with all applicable state  
6 and local building standards, including those described in  
7 subdivision (b) of Section 51189, and shall provide a copy of the  
8 report, upon request, to the property insurance carrier that insures  
9 the dwelling or structure.

10 (b) A person is not required under this section to manage fuels  
11 on land if that person does not have the legal right to manage fuels,  
12 nor is a person required to enter upon or to alter property that is  
13 owned by any other person without the consent of the owner of  
14 the property.

15 (c) The Department of Forestry and Fire Protection shall  
16 develop, periodically update, and post on its Internet Web site a  
17 guidance document on fuels management pursuant to this chapter.  
18 The guidance document shall include, but not be limited to,  
19 regionally appropriate vegetation management suggestions that  
20 preserve and restore native species, minimize erosion, minimize  
21 water consumption, and permit trees near homes for shade,  
22 aesthetics, and habitat; and suggestions to minimize or eliminate  
23 the risk of flammability of nonvegetative sources of combustion  
24 such as woodpiles, propane tanks, decks, and outdoor lawn  
25 furniture.

26 SEC. 2. Section 4291 of the Public Resources Code is amended  
27 to read:

28 4291. (a) A person who owns, leases, controls, operates, or  
29 maintains a building or structure in, upon, or adjoining a  
30 mountainous area, forest-covered lands, brush-covered lands,  
31 grass-covered lands, or land that is covered with flammable  
32 material, shall at all times do all of the following:

33 (1) Maintain defensible space of 100 feet from each side and  
34 from the front and rear of the structure, but not beyond the property  
35 line except as provided in paragraph (2). The amount of fuel  
36 modification necessary shall take into account the flammability  
37 of the structure as affected by building material, building standards,  
38 location, and type of vegetation. Fuels shall be maintained in a  
39 condition so that a wildfire burning under average weather  
40 conditions would be unlikely to ignite the structure. This paragraph

1 does not apply to single specimens of trees or other vegetation that  
2 are well-pruned and maintained so as to effectively manage fuels  
3 and not form a means of rapidly transmitting fire from other nearby  
4 vegetation to a structure or from a structure to other nearby  
5 vegetation. The intensity of fuels management may vary within  
6 the 100-foot perimeter of the structure, the most intense being  
7 within the first 30 feet around the structure. Consistent with fuels  
8 management objectives, steps should be taken to minimize erosion.  
9 For the purposes of this paragraph, “fuel” means any combustible  
10 material, including petroleum-based products and wildland fuels.

11 (2) A greater distance than that required under paragraph (1)  
12 may be required by state law, local ordinance, rule, or regulation.  
13 Clearance beyond the property line may only be required if the  
14 state law, local ordinance, rule, or regulation includes findings that  
15 the clearing is necessary to significantly reduce the risk of  
16 transmission of flame or heat sufficient to ignite the structure, and  
17 there is no other feasible mitigation measure possible to reduce  
18 the risk of ignition or spread of wildfire to the structure. Clearance  
19 on adjacent property shall only be conducted following written  
20 consent by the adjacent landowner.

21 (3) An insurance company that insures an occupied dwelling  
22 or occupied structure may require a greater distance than that  
23 required under paragraph (1) if a fire expert, designated by the  
24 director, provides findings that the clearing is necessary to  
25 significantly reduce the risk of transmission of flame or heat  
26 sufficient to ignite the structure, and there is no other feasible  
27 mitigation measure possible to reduce the risk of ignition or spread  
28 of wildfire to the structure. The greater distance may not be beyond  
29 ~~the property line unless allowed by state law, local ordinance, rule,~~  
30 ~~or regulation.~~ *the property line, unless either of the following apply:*

31 (A) *The greater distance is allowed by state law, local*  
32 *ordinance, rule, or regulation.*

33 (B) *The property is adjacent to state public lands, in which case*  
34 *all of the following shall apply:*

35 (i) *The state public lands management agency shall grant a*  
36 *right of entry boundary permit to a person subject to this*  
37 *subparagraph to enter land controlled by the state public lands*  
38 *management agency for purposes of undertaking defensible space*  
39 *work. The state public lands management agency shall also grant*  
40 *a right of entry boundary permit to a homeowners’ association,*

1 *other type of multidwelling agency, local regional fire safe council,*  
 2 *or other organized fire protection and prevention entity to*  
 3 *undertake defensible space work for all residents who are subject*  
 4 *to this subparagraph and who are represented by that entity or*  
 5 *organization. For purposes of this subparagraph, “defensible*  
 6 *space work” means the clearing that is necessary to significantly*  
 7 *reduce the risk of transmission of flame or heat sufficient to ignite*  
 8 *the structure.*

9 *(ii) The state shall require a person passing onto and conducting*  
 10 *defensible space work on state public lands to provide a liability*  
 11 *waiver, to ensure that the state is not liable for an injury incurred*  
 12 *during the work.*

13 *(iii) If the person subject to this section enters into a contract*  
 14 *with a third party to conduct the defensible space work, the*  
 15 *contractor shall maintain insurance, and if the resident is*  
 16 *undertaking the defensible space work himself or herself, the*  
 17 *resident shall maintain homeowners’ or other appropriate*  
 18 *insurance.*

19 *(iv) The person undertaking the defensible space work on the*  
 20 *public lands shall be over 18 years of age.*

21 *(v) The defensible space work conducted pursuant to this*  
 22 *subparagraph, including the granting of a permit pursuant to this*  
 23 *subparagraph, is exempt from Division 21 (commencing with*  
 24 *Section 21000) and Chapter 8 (commencing with Section 4511).*

25 *(4) Remove that portion of a tree that extends within 10 feet of*  
 26 *the outlet of a chimney or stovepipe.*

27 *(5) Maintain a tree, shrub, or other plant adjacent to or*  
 28 *overhanging a building free of dead or dying wood.*

29 *(6) Maintain the roof of a structure free of leaves, needles, or*  
 30 *other vegetative materials.*

31 *(7) Prior to constructing a new building or structure or rebuilding*  
 32 *a building or structure damaged by a fire in an area subject to this*  
 33 *section, the construction or rebuilding of which requires a building*  
 34 *permit, the owner shall obtain a certification from the local building*  
 35 *official that the dwelling or structure, as proposed to be built,*  
 36 *complies with all applicable state and local building standards,*  
 37 *including those described in subdivision (b) of Section 51189 of*  
 38 *the Government Code, and shall provide a copy of the certification,*  
 39 *upon request, to the insurer providing course of construction*  
 40 *insurance coverage for the building or structure. Upon completion*

1 of the construction or rebuilding, the owner shall obtain from the  
2 local building official, a copy of the final inspection report that  
3 demonstrates that the dwelling or structure was constructed in  
4 compliance with all applicable state and local building standards,  
5 including those described in subdivision (b) of Section 51189 of  
6 the Government Code, and shall provide a copy of the report, upon  
7 request, to the property insurance carrier that insures the dwelling  
8 or structure.

9 (b) A person is not required under this section to manage fuels  
10 on land if that person does not have the legal right to manage fuels,  
11 nor is a person required to enter upon or to alter property that is  
12 owned by any other person without the consent of the owner of  
13 the property.

14 (c) (1) Except as provided in Section 18930 of the Health and  
15 Safety Code, the director may adopt regulations exempting a  
16 structure with an exterior constructed entirely of nonflammable  
17 materials, or, conditioned upon the contents and composition of  
18 the structure, the director may vary the requirements respecting  
19 the removing or clearing away of flammable vegetation or other  
20 combustible growth with respect to the area surrounding those  
21 structures.

22 (2) An exemption or variance under paragraph (1) shall not  
23 apply unless and until the occupant of the structure, or if there is  
24 not an occupant, the owner of the structure, files with the  
25 department, in a form as the director shall prescribe, a written  
26 consent to the inspection of the interior and contents of the structure  
27 to ascertain whether this section and the regulations adopted under  
28 this section are complied with at all times.

29 (d) The director may authorize the removal of vegetation that  
30 is not consistent with the standards of this section. The director  
31 may prescribe a procedure for the removal of that vegetation and  
32 make the expense a lien upon the building, structure, or grounds,  
33 in the same manner that is applicable to a legislative body under  
34 Section 51186 of the Government Code.

35 (e) The Department of Forestry and Fire Protection shall  
36 develop, periodically update, and post on its Internet Web site a  
37 guidance document on fuels management pursuant to this chapter.  
38 The guidance document shall include, but not be limited to,  
39 regionally appropriate vegetation management suggestions that  
40 preserve and restore native species, minimize erosion, minimize



1 water consumption, and permit trees near homes for shade,  
2 aesthetics, and habitat; and suggestions to minimize or eliminate  
3 the risk of flammability of nonvegetative sources of combustion  
4 such as woodpiles, propane tanks, decks, and outdoor lawn  
5 furniture.

6 (f) As used in this section, “person” means a private individual,  
7 organization, partnership, limited liability company, or corporation.

8 *SEC. 3. No reimbursement is required by this act pursuant to*  
9 *Section 6 of Article XIII B of the California Constitution because*  
10 *a local agency or school district has the authority to levy service*  
11 *charges, fees, or assessments sufficient to pay for the program or*  
12 *level of service mandated by this act, within the meaning of Section*  
13 *17556 of the Government Code.*